

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**SCARSELLA BROS., INC., a Washington
Corporation**

NO.

Plaintiff,

V

FEDERAL INSURANCE COMPANY, and
Indiana Corporation,

COMPLAINT FOR DECLARATORY RELIEF, BREACH OF CONTRACT, AND DAMAGES

DEMAND FOR JURY TRIAL

Scarsella Bros., Inc. (“Scarsella”) alleges as follows:

I. INTRODUCTION

1.1 Summary of Action. This is an action for declaratory judgment, breach of contract, violation of the Unfair Claims Settlement Practices Act of the Washington Administrative Code, and violation of Washington's Consumer Protection Act, seeking:

**COMPLAINT FOR DECLARATORY RELIEF,
BREACH OF CONTRACT, AND DAMAGES - 1**

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1 (a) A declaration of the rights, duties, and liabilities of the parties under an
2 excess liability insurance policy issued to Scarsella by Federal Insurance Company (“Federal”)
3 with respect to certain liabilities incurred by Scarsella for environmental property damage; and
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5 (b) Damages for breach of Federal’s contractual duties under the excess
6 liability policy with respect to said liabilities.
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8 (c) Compensatory damages, including treble damages, for Federal’s violation
9 of the Washington Consumer Protection Act; and
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11 (d) All attorneys’ fees and costs incurred by Scarsella in asserting this
12 coverage claim and prosecuting this action, pursuant to the rule in *Olympic Steamship Co., Inc. v.*
13 *Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), and its progeny.
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21 II. THE PARTIES 22

23 2.1 **Plaintiff.** Scarsella is a corporation organized under the laws of the State of
24 Washington and has its principal place of business in Kent, Washington. Scarsella is authorized
25 to do business and is doing business in the State of Washington.
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27 2.2 **Defendant Federal.** Upon information and belief, Federal is a corporation
28 organized under the laws of the State of Indiana, with its principal place of business in Warren,
29 New Jersey. Federal is, and was at all times relevant to this Complaint, an authorized insurer in
30 the State of Washington.
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32 III. JURISDICTION AND VENUE 33

34 3.1 **Subject Matter Jurisdiction.** This Court has jurisdiction over the parties and the
35 subject matter of this action under 28 U.S.C. §2201 and 28 U.S.C. § 1332 because the parties are
36 citizens of different states and the amount in controversy exceeds \$75,000.
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38 3.2 **Personal Jurisdiction.** This Court has personal jurisdiction of both parties.
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1 3.3 **Venue.** Venue is proper in the Western District of Washington at Seattle under
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3 28 U.S.C. §1331(a) and (c).
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5 **IV. THE EXCESS LIABILITY INSURANCE POLICY AT ISSUE**
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7 4.1 **The Policy.** In consideration of the premium paid by Scarsella, Federal sold to
8 Scarsella an excess liability policy, number 79290562, with limits of \$9,000,000 excess of
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10 \$1,500,000 (“the Policy”).
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12 4.2 **Underlying Policies.** United Pacific Insurance Company (“United Pacific”)
13 provided the primary layer of coverage to Scarsella with a limit of \$500,000. Integrity Insurance
14 Company (“Integrity”) provided the first layer of excess liability coverage to Scarsella in the
15 amount of \$1 million.
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17 4.3 **Insolvent.** United Pacific and Integrity are insolvent and have been liquidated.
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19 4.4 **Other Policies.** Federal may have issued liability policies to Scarsella in addition
20 to the policy specified above. Although Scarsella has not located any other policies issued by
21 Federal, Scarsella hereby reserves the right to claim coverage under additional policies should
22 such additional policies become known to Scarsella.
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24 **V. THE UNDERLYING LIABILITIES**
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26 5.1 **Underlying Liabilities.** Scarsella, a construction company, has incurred, and will
27 continue to incur, liability for property damage allegedly sustained by third parties to soil and
28 groundwater as a result of historical operations and resulting environmental contamination at the
29 site of its former heavy equipment yard and operations base (“Underlying Liabilities”), generally
30 located at 16025 International Boulevard, SeaTac, Washington (“the Site”). A Consent Decree
31 related to the Site was filed in the King County Superior Court on July 24, 2012, to implement
32 the cleanup according the Cleanup Action Plan. Scarsella is listed as a Potentially Liable Party
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1 in the Consent Decree. Scarsella is liable under the Washington Model Toxics Control Act for
2 the costs of investigating and remediating the Site.
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5 **5.2 Damages.** Scarsella has incurred, and will continue to incur, losses and expenses,
6 in excess of \$75,000, in connection with the Underlying Liabilities. These losses and expenses
7 include investigatory costs and money paid as damages, including but not limited to costs of
8 remediating the Site.
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11 **5.3 Occurrences or Accidents During Policy Periods.** Scarsella's actual and
12 potential liability for the Underlying Liabilities arises out of alleged occurrences or accidents that
13 took place during the period of the Policy.
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16 **5.4 Property Damage During Policy Period.** Damage to property at the Site in the
17 form of environmental contamination occurred during the period of the Policy.
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20 **5.5 Notice and Other Conditions Precedent.** Scarsella has provided timely notice
21 to Federal concerning the Underlying Liabilities and all other conditions precedent to the
22 recovery under the Policy have been satisfied or discharged by operation of law.
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25 **5.6 Denial.** Prior to entry of the Consent Decree, Federal refused to indemnify
26 Scarsella despite admitting Scarsella incurred indemnity costs and expenses and would continue
27 to incur indemnity costs and expenses. Federal maintained the Policy requires a final
28 determination of liability, that no final determination of liability had occurred, and that it was
29 Scarsella's burden to disprove the existence of a policy exclusion. After entry of the Consent
30 Decree, a clear and final determination of liability, Federal reiterated its refusal to indemnify
31 Scarsella on the same basis.
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VI. FIRST CLAIM: DECLARATORY JUDGMENT

6.1 Incorporation by Reference. Scarsella realleges the allegations of paragraphs 1.1 through 5.6 above.

6.2 Duty to Pay. Under the Policy, Federal undertook to pay on behalf of Scarsella “Loss” resulting from any covered occurrence. The duty to pay is subject only to the terms stated in the Policy.

6.3 Breach of Contract. Federal has breached its duty to pay. Federal has failed and refused to acknowledge the Underlying Liabilities are within the duty to pay under the Policy and has refused to pay costs incurred by Scarsella with respect to the Underlying Liabilities.

6.4 Actual Controversy. An actual controversy of a justiciable nature presently exists between Scarsella and Federal regarding the proper construction of the Policy and the rights and obligations of the parties thereto with respect to the Underlying Liabilities. The issuance of declaratory relief by this Court will terminate the existing controversy between the parties.

VII. SECOND CLAIM: BREACH OF CONTRACT

7.1 Incorporation by Reference. Scarsella realleges the allegations of paragraphs 1.1 through 6.4 above.

7.2 Breach of Contract. Federal has breached its duty to pay. Federal has failed and refused to acknowledge the Underlying Liabilities are within the duty to pay under the Policy and has refused to pay costs incurred by Scarsella with respect to the Underlying Liabilities.

1 **7.3 Damages.** As a direct and proximate result of Federal's breach of the Policy,
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3 Scarsella has been deprived of the benefits of its insurance coverage with respect to the
4
5 Underlying Liabilities.
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7 **7.4 Additional Damages.** As another direct and proximate result of Federal's breach
8 of the Policy, Scarsella has been forced to incur attorneys' fees and other expenses in order to
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10 prosecute this action.
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13 **VIII. THIRD CLAIM: VIOLATION OF THE WASHINGTON UNFAIR CLAIMS**
14 **SETTLEMENT PRACTICES ACT (WAC 284-30, *et seq.*) AND THE**
15 **WASHINGTON CONSUMER PROTECTION ACT (RCW 19.86)**
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17 **8.1 Incorporation by Reference.** Scarsella realleges the allegations of paragraphs
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19 1.1 through 7.4 above.
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21 **8.2 Violation of WAC 284-30, *et seq.*** Washington has adopted an Unfair Claims
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23 Settlement Practices Act under Chapter 284-30, *et seq.* of the Washington Administrative Code.
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25 Federal violated the Unfair Claims Settlement Practices Act by:
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27 (a) Misrepresenting pertinent facts or insurance policy provisions in violation
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29 of WAC 284-30-330(1);
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31 (b) Not attempting in good faith to effectuate prompt, fair and equitable
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33 settlements of claims in which liability has become reasonably clear in violation of WAC 284-
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35 30-330(6); and
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37 (c) Failing to fully disclose to Scarsella all pertinent benefits, coverages or
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39 other provisions of its insurance policy or insurance contract in violation of WAC 284-30-
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41 350(1).
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8.3 Damages. Violation of the above WAC provisions is a violation of the Consumer Protection Act, RCW 19.86, *et seq.*, entitling Scarsella to the exemplary damages set forth in the Consumer Protection Act for each and every violation, along with attorneys' fees and costs.

IX. PRAYER FOR RELIEF

WHEREFORE, Scarsella prays for the following relief:

9.1 Declaratory Judgment. That this Court declare and decree that Federal is obligated to pay in full on behalf of Scarsella “Loss” resulting from any covered occurrence with respect to the Underlying Liabilities.

9.2 Money Damages. That Scarsella be awarded money damages, in an amount to be proved at trial, together with pre-judgment and post-judgment interest.

9.3 WAC Violation. That this Court declare and decree that Federal violated the Washington Administrative Code 284-30, *et seq.* and the Unfair Claims Settlement Practices Act, which constitutes a violation of Washington's Consumer Protection Act.

9.4 Compensatory Damages. That Scarsella be awarded compensatory damages for Federal's breach of the Washington Consumer Protection Act, including treble damages and attorneys' fees.

9.5 Attorneys' Fees and Costs of Suit. That Scarsella be awarded its reasonable attorneys' fees and costs, including, without limitation, actual attorneys' fees pursuant to *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).

9.6 Other Relief. For such further relief as the Court deems just, proper, and equitable.

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1 **X. DEMAND FOR JURY TRIAL**
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3 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Scarsella demands trial by
4 jury in this action of all issues so triable.
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6 DATED this 9th day of October, 2012.
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8 **GORDON TILDEN THOMAS & CORDELL LLP**
9 Attorneys for Plaintiff Scarsella Bros., Inc.
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12 *s/Dale L. Kingman*
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